

EXHIBIT 5

(SEALED)



**UNITED STATES DISTRICT COURT
FOR DISTRICT OF MINNESOTA**

SNYDERS HEART VALVE LLC)	
)	
)	
Plaintiff,)	
)	
- vs. -)	CIVIL ACTION NO. 18-2030
)	
ST. JUDE MEDICAL, CARDIOLOGY)	
DIVISION INC.; ST. JUDE MEDICAL S.C.,)	
INC., and ST. JUDE MEDICAL, LLC)	
)	
)	
)	
)	
Defendants.)	
)	

**SUPPLEMENTAL REBUTTAL EXPERT REPORT
OF MARK J. CHANDLER
RESPONDING TO THE SUPPLEMENTAL EXPERT REPORT
OF KIMBERLY J. SCHENK**

**May 20, 2020
Conshohocken, Pennsylvania**

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY

SNYDERS HEART VALVE LLC
v.
ST. JUDE MEDICAL, CARDIOLOGY DIVISION INC.;
ST. JUDE MEDICAL S.C., INC.,
and ST. JUDE MEDICAL, LLC

**SUPPLEMENTAL REBUTTAL EXPERT REPORT
OF MARK J. CHANDLER
RESPONDING TO THE SUPPLEMENTAL EXPERT REPORT
OF KIMBERLY J. SCHENK**


1. I have reviewed the Supplemental Expert Report of Kimberly J. Schenk,¹ submitted on May 6, 2020 in the matter of *Snyders Heart Valve LLC v. St. Jude Medical, Cardiology Division Inc.; St. Jude Medical S.C., Inc., And St. Jude Medical, LLC*. Ms. Schenk's supplemental report updates the royalty calculations presented in her original report of November, 2017² to include estimated damages through April 2020.
2. In her original report, Ms. Schenk provided royalty calculations through September 2017, based on financial data produced by St. Jude. She also prepared estimated royalty projections, from October 2017 through March 2018, based on certain assumptions that she made. In her supplemental report, Ms. Schenk has provided estimated royalty calculations through April 2020, but she based these on her speculative November 2017 **estimates** of St. Jude sales from October 2017 through March 2018.

¹ Supplemental Expert Report of Kimberly J. Schenk, May 6, 2020, Case No. 18-cv-2030, in the District Court for District of Minnesota.

² Expert Report of Kimberly J. Schenk, November 20, 2017, Civil Action Number 4:16-cv-812-ALM in the Eastern District of Texas.

3. Providing estimates of past sales is unnecessary because actual sales data is available. I understand that St. Jude has produced actual sales data through March 2020.³
4. Furthermore, Ms. Schenk has not made any attempt to assess the impact of the PTAB *inter partes* rulings, which judged all of the asserted claims of the '297 Patent as non-patentable and the first independent claim, as well as several other asserted claims, of the '782 Patent as non-patentable.⁴ I would have expected a supplemental analysis of the value proposition of the assets being licensed in the hypothetical negotiation to include an acknowledgement of the fact that the licensed assets have changed significantly and an assessment of the impact of this change. Ms. Schenk has not considered this change in landscape in her analysis.
5. As I explain in my May 6, 2020 Supplemental Report, Ms. Schenk significantly overstates the value of the Patent-in-Suit by failing to consider the utility or advantage of the remaining claims, post-PTAB *inter partes* rulings, as compared to the technology that was already known in the field.⁵

Date: May 20, 2020


Mark J. Chandler
Managing Director
Upstream Partners

³ SJM00457962.

⁴ Final Written Decision, Case IPR2018-00106, Patent 6,540,782 B1; Final Written Decision, Case IPR2018-00107, Patent 6,821,297 B2.

⁵ Supplemental Rebuttal Expert Report of Mark J. Chandler, May 6, 2020, Case No. 18-cv-2030, in the District Court for District of Minnesota at Section IV.A.